

February 4, 2011

BY ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

Re: Petition for Waiver – Allied Wireless Communications Corporation
Petition for Waiver – Georgia RSA #8 Partnership
WC Docket No. 09-197
CC Docket No. 96-45
WC Docket No. 08-71
Written *Ex Parte* Communication

Dear Ms. Dortch:

Allied Wireless Communications Corporation (“Allied Wireless”) and Georgia RSA #8 Partnership (“Georgia 8”)¹ filed petitions seeking waiver of Federal Communications Commission (“Commission”) rules requiring newly designated Eligible Telecommunications Carriers (“ETCs”), such as Allied Wireless and Georgia 8 to file line count information and related state public service commission certifications within 60 days of the effective date of their ETC designations.²

The reason for the requested waivers is straight forward, namely: Allied Wireless’s and Georgia 8’s ETC designations were granted after the applicable filing deadlines. The only way that line count and certification filings could have been made before the deadline is if they had been made *before* the ETC petitions were granted. The Bureau, however, has specifically held that ETC applicants are not required to file line counts during the pendency of their petitions. Indeed, the entire purpose of the Commission’s 2005 rule allowing newly designated ETCs to make their periodic filings within 60 days of their ETC designation date was to avoid the hardship to ETCs of denying them support solely because of the timing of their ETC designations relative to the filing deadlines. Granting the requested waivers therefore is the only way to be true to the Bureau precedent and fulfill the purpose of the rule.

¹ Allied Wireless holds a 33.33 percent interest in, and is the managing general partner of, Georgia 8. The other partners in Georgia 8 are Bulloch Cellular, Inc., Pineland Cellular, Inc., Plant Cellular RSA 8, Inc., and Planters Rural Cellular, Inc.

² See Georgia 8 Petition for Waiver, WC Docket No. 09-197, CC Docket No. 96-45, WC Docket No. 08-71 (filed Oct. 27, 2010); Allied Wireless Petition for Waiver, WC Docket No. 09-197, CC Docket No. 96-45, WC Docket No. 08-71 (filed Nov. 2, 2010) (collectively, the “Petitions”).

We appreciate that, since the 60-day rule was adopted, the Bureau has denied many ETC filing deadline waiver petitions where failures to file resulted from an ETC's negligence or inadvertent error. However, the unique circumstances of this case more closely resemble the waivers that the Bureau granted – routinely – prior to 2005. Moreover, for the reasons noted herein and in earlier filings, the instant petitions arise from unique circumstances that make their grant entirely consistent with the policy underlying the current filing deadline rule and other Commission precedent and would advance important public interest goals set, and determinations already reached, by both the Georgia Public Service Commission (“Georgia PSC”) and the Commission. The pending petitions therefore should be granted without further delay.

Background

To support the distribution of high-cost universal service support to ETCs, the Commission requires that carriers file quarterly line count information, and that state public service commissions certify annually that the carriers will use the support for its intended purposes.³ ETCs that miss these deadlines are denied support for the quarter or year covered by the missed filing.⁴ Because few ETCs' designation dates fall neatly on a filing deadline, and because the rules require filings in advance of receiving support, the Commission adopted a rule in 2005 allowing newly designated ETCs to receive support as of the date of their ETC designations if their line counts and certifications are within 60 days of the effective date of the ETC designation.⁵

The Commission and the U.S. Department of Justice ordered that the wireless businesses at issue here, which had been long supported by significant universal service funding, were to be divested, but the divestiture was structured in such a way as to preclude transfer of the ETC designations necessary to allow for continuous receipt of that funding. For over a year immediately prior to the divestiture, a management trustee operated these businesses with ETC support and developed capital investment budgets with the assumption of continued support.

The Georgia PSC, which has jurisdiction under Section 214(e) of the Communications Act over ETC designations in that state, determined that unique circumstances and the need to avoid an interruption in long-existing ETC support for the telecommunications services provided in the relevant areas warranted making the ETC designations for Allied Wireless and Georgia 8 effective as of the date they acquired these operations (i.e., April 26, 2010).⁶ The acquisition

³ See, e.g., 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.809, 54.904.

⁴ *Id.*

⁵ 47 C.F.R. §§ 54.307(d), 54.313(d)(vi), 54.314(e)(6).

⁶ See *In Re: Application of Allied Wireless Communication Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Georgia PSC Docket No. 31734, Order Granting

date was more than 60 days before the Georgia PSC's decision, so the deadline for compliance with the Commission's procedural deadlines for filing state certifications and line counts had already passed. The requested procedural waivers would allow ETC support, which was interrupted as a result of these unique circumstances, to be restored.

I. Grant of the Petitions Is Consistent With Commission Policy and Precedent.

Consistent with the Georgia PSC's findings, the record in the state proceeding amply demonstrates the unique circumstances that gave rise to the Petitions. As demonstrated below, grants of the Petitions would be consistent with the Commission's policy regarding ETC filing deadlines and its waiver precedent.

A. Denying support to an ETC based on the timing of its ETC designation order is inconsistent with Bureau precedent.

The Commission's rules prescribe a schedule of quarterly line count filings for ETCs and annual certifications for state commissions regarding the use of the support by ETCs in their states.⁷ The rules require these line count filings to be made one or two quarters (depending upon the support mechanism) in advance of the quarter in which support is to be received (e.g., to receive most types of high-cost support in the fourth quarter of a given year, an ETC must make line count filings on July 31 of that year).⁸ State commissions must submit their certifications by October 1 of each year in order for ETCs in their states to receive support in the following year.⁹ The penalty for failing to meet the filing deadline schedule is that the ETC is denied support for the period covered by the missed filing.¹⁰

ETC Status, Document No. 131991 (filed Oct. 13, 2010, corrected Nov. 2, 2010), at 9; *In Re: Application of Georgia RSA #8 Partnership for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Georgia PSC Docket No. 32325, Order Granting ETC Status, Document No. 131639 (filed Oct. 14, 2010), at 9. As recently as December 22, 2010, the Georgia PSC has reconfirmed its view that "the unique circumstances surrounding Allied's request support the retroactive effective date." *In Re: Application of Allied Wireless Communication Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Georgia PSC Docket No. 31734, Order Denying Public Service Telephone Company's Request for Reconsideration of Order Denying Intervention, Document No. 133040, at 4. Significantly, the sole party that filed comments with the Commission on the Petitions, Public Service Telephone Company, has not disputed that the circumstances presented here are unique.

⁷ See, e.g., 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.809, 54.904.

⁸ 47 C.F.R. § 54.307(c).

⁹ C.F.R. §§ 54.313, 54.314.

¹⁰ See, e.g., 47 C.F.R. §§ 54.307, 54.313, 54.314, 54.809, 54.904.

Because state commissions do not necessarily grant ETC petitions on a schedule that conforms to the filing schedule, the rules would effectively deny support to newly designated ETCs for at least one quarter – and sometimes up to a year – until they caught up on their periodic filings. The Bureau has always held, however, that it would be “onerous to deny an ETC receipt of universal service support because the ETC designation occurred after the filing deadline.”¹¹ On this basis, prior to 2005, the Bureau routinely granted waivers to new ETCs that received their ETC designations after the quarterly and annual filing deadlines had passed.¹²

To avoid the need for a waiver every time a new ETC was designated, the Commission in 2005 adopted a rule allowing newly designated ETCs to receive support as of the date of their ETC designations as long as they made their filings within 60 days of their ETC designation date.

In adopting this 60-day rule, the Commission clearly stated that the purpose of the rule change was “to enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC’s designation date.”¹³ The Bureau has confirmed that the purpose of the 60-day rule was to prevent the same hardship that the Bureau previously had prevented by granting waivers – the loss of support to a new ETC as a result of the timing of its

¹¹ This identical quote appears in numerous Bureau decisions waiving ETC filing deadlines that fell before the adoption of the 60-day rule. See, e.g., *Federal-State Joint Board on Universal Service; MTA Communications Inc. d/b/a MTA Wireless, Petition for Waiver of Section 54.314(d) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 964 (WCB 2007); *Centennial Cellular Tri-State Operating Partnership and Centennial Claiborne Cellular Corp.; Petition for Waiver of Section 54.314(d) of the Commission's Rules*; *Mississippi Public Service Commission; Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 9170 (WCB 2006); *Federal-State Joint Board on Universal Service; Grande Communications, Inc., Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580 (WCB 2004); *Federal-State Joint Board on Universal Service; Centennial Cellular Tri-State Operating Partnership, Centennial Claiborne Cellular Corp.; Petition for Waiver of Section 54.313(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 15587 (WCB 2004); *Federal-State Joint Board on Universal Service; Midwest Wireless Iowa, L.L.C., Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 19 FCC Rcd 10484 (WCB 2004); *Federal-State Joint Board on Universal Service; N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 18 FCC Rcd 15597 (WCB 2003); *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 18 FCC Rcd 7138 (WCB 2003); *Federal-State Joint Board on Universal Service; RFB Cellular, Inc. Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, 17 FCC Rcd 24387 (WCB 2002).

¹² See immediately preceding footnote.

¹³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6411 ¶ 92 (2005) (“2005 ETC Order”) (adopting the 60-day rule).

designation.¹⁴ In this case, however, because the effective dates of Allied Wireless's and Georgia 8's ETC designations were more than 60 days before the date when the Georgia PSC issued its orders, the 60-day rule did not serve its purpose of "enabl[ing] customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date."¹⁵ Thus, on the unique facts of this case, the only way to fulfill the purpose of the rule is to grant a limited waiver of it.

Indeed, strict application of the filing deadline rules in this case would lead to the absurd result of Allied Wireless and Georgia 8 receiving *less* support than they would have received if the Georgia PSC had not granted *nunc pro tunc* designation. If the Georgia PSC's ETC designations had been made effective on their adoption date of September 21, 2010, Allied Wireless and Georgia 8 would have been eligible for support during fourth quarter of 2010 (based on their having filed line counts and certifications within 60 days of that date). However, solely because the order specified an effective date of April 26, 2010, without the requested waiver the petitioners would be unable to receive support until the first quarter of 2011 – ironically, denying them one quarter of support in 2010 when the state intended for them to be eligible for nearly three quarters of support in 2010. This onerous result further demonstrates that denying a waiver here would thwart the purpose of the rule rather than serve it.

Moreover, the loss of support would be even more "onerous"¹⁶ in this case because these customers had benefited from support prior to the divestiture order. Whereas, prior to 2005, the Bureau routinely granted waivers to prevent a *delay* in the *commencement* of the flow of *new* support, a waiver in this case is necessary to prevent an *interruption* of support.

In fact, the language of the *2005 ETC Order* suggests that the Commission may well have intended that the 60-day rule protect Allied Wireless and Georgia 8 in this instance. Although the regulation, as codified, ties the 60-day deadline to the "effective date" of the ETC designation,¹⁷ the text of the *2005 ETC Order* speaks only of "the ETC designation date."¹⁸ Indeed, as the subsequent cases bear out, the Commission's adoption of the 60-day rule was

¹⁴ See, e.g., *Federal -State Joint Board on Universal Service; MTA Communications Inc. d/b/a MTA Wireless, Petition for Waiver of Section 54.314(d) of the Commission's Rules*, CC Docket No. 96-45, Order, 22 FCC Rcd 964, 966 ¶ 8 (WCB 2007) (granting a waiver of a filing deadline that fell prior to the effective date of the 60-day rule was "consistent with the Commission's amendment to section 54.317(d)(6) [adopting the 60-day rule] and previous waiver grants").

¹⁵ *2005 ETC Order*, 20 FCC Rcd at 6411 ¶ 92.

¹⁶ See *supra* note 11.

¹⁷ 47 C.F.R. § 54.307(d).

¹⁸ *2005 ETC Order*, 20 FCC Rcd at 6411 ¶¶ 91-92. There is no indication in the *2005 ETC Order* that the Commission contemplated the possibility that ETC designations might be made effective retrospectively by more than 60 days. Indeed, the Commission expected that adopting the 60-day rule would "eliminate the need for carriers to seek waivers of filing deadlines in order to receive support on a timely basis." *Id.*

motivated by a desire to avoid the circumstance in which “an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support.”¹⁹ As discussed below, the Commission does not require aspiring ETCs to make line count filings in anticipation of their ETC designations, and Allied Wireless’s and Georgia 8’s line counts and certifications were filed less than 60 days after the date their ETC designations were granted. Thus, under the literal language employed by the Commission in the *2005 ETC Order*, their filings were timely and should be accepted. At a minimum, Allied Wireless and Georgia 8 made a good faith effort to comply with the intent of 60-day rule, and the bedrock justification for a waiver grant – i.e., that the waiver would better serve the public interest than strict application of the rule itself – is present here.²⁰

The adoption of the 60-day rule eliminated the need for most ETCs to file waiver requests, because their designations are almost always prospective. Thus, the Bureau’s more recent decisions have generally involved cases involving negligence or inadvertence, limiting waiver grants to cases where filings were made only a few days late.²¹ Implicit in these decisions is the concept that, in such cases where the applicant has failed to meet an obligation of which it had clear, unambiguous, advance notice, only minor infractions will be tolerated. The circumstances of the instant case, however, do not fit within the context of the recent precedent.

It was not negligence or inadvertence that prevented timely filings here; indeed, Allied Wireless and Georgia 8 made the filings promptly after the ETC designation date. This case therefore is more closely analogous to the numerous waiver requests arising before the Commission adopted the 60-day rule, where, as noted above, the Bureau routinely granted waivers for line counts and certifications filed weeks and months after the deadline, and without any showing of extenuating circumstances (other than the timing of the ETC effective date itself).²²

Moreover, none of the recent cases involved both the unique circumstances and significant public interest considerations inherent in this case.²³ Unlike other ETC applicants,

¹⁹ *Id.* at ¶ 91.

²⁰ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²¹ See, e.g., *Petitions for Waiver of Universal Service High-Cost Filing Deadlines; Federal-State Joint Board on Universal Service; Dixie Net Communications, Inc., Petition for Waiver of Section 54.307(c) of the FCC’s Rules*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 11-42 (WCB TAPD rel. Jan. 13, 2011) at ¶ 7 (“In instances where carriers have filed the required data or certifications shortly after filing deadlines, the Commission has waived its rules.”).

²² See *supra* note 11.

²³ See *infra* Section II. The fact that this case concerns the continuation of pre-existing support is one of several factors that distinguish this case from the Centennial waiver request that the Bureau denied in 2009. See *Centennial USVI Operations Corp. Petition for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71 and CC Docket No. 96-45, Order, 24 FCC Rcd 4821 (WCB Apr. 21, 2009).

Allied Wireless acquired an existing customer base which already enjoyed the benefit of ETC support before the court- and FCC-ordered divestiture. As a result, strict adherence to the rule would result in an interruption of existing support to customers already being served on supported facilities. In addition, in this case the Commission and DOJ both found that the applicants' entry into these markets, as new entrants, would serve the public interest by continuing to promote competition in these markets.²⁴ Denial of the requested waivers would then, in effect, deny Allied Wireless's customer base the provision of ETC support from which they had previously benefited, solely as a result of a court-ordered divestiture process. No Commission precedent provides support for such a result.

Finally, denial of the requested waivers would violate principles of federal-state comity to which the Commission has long adhered.²⁵ A determination by the Commission that good cause exists for the requested waivers would afford appropriate respect for the decision of the Georgia PSC, which determined based on a full and complete record that the unique facts and compelling public interest considerations warranted designation of Allied Wireless and Georgia 8 as ETCs effective as of the date they acquired the Georgia markets so that ETC support for these markets would not be interrupted. Strictly enforcing these procedural rules would thwart the Georgia PSC's public interest determination by denying the petitioners *any* support in 2010.²⁶

B. Granting a waiver in this case is consistent with the Bureau's decision that ETC applicants are not obligated to file line counts while their ETC applications are pending.

The Bureau has held that "a carrier *may* file line counts in anticipation of ETC designation but *is not required* to file such line counts."²⁷ In this case, to have avoided the need for a waiver of the line count filing deadline, Allied Wireless and Georgia 8 would have had to file some line counts with USAC while their ETC petitions were pending before the Georgia

²⁴ *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless For Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Rcd 3763, 3764 ¶ 1 (WTB/IB 2010); see also *id.* at 3773 ¶ 19 (citing Atlantic Tele-Network, Inc. Announces Department of Justice Approval for Acquisition of Former Alltel Assets, AWCC Press Release (Apr. 8, 2010), available at <http://www.awcc.com/news.html#040810>).

²⁵ See *Global NAPs, Inc. Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc.*, CC Docket No. 99-154, Memorandum Opinion and Order, 14 FCC Rcd 12530, 12538 ¶ 17 (1999) ("Principles of federal-state comity and efficiency lead us to question the merit of assuming jurisdiction over the completed state proceeding")

²⁶ As noted above, Allied Wireless and Georgia 8 would at least have received support for the fourth quarter of 2010 if the Georgia PSC had made their ETC designations effective as of the date of adoption.

²⁷ *Federal-State Joint Board on Universal Service, Grande Communications, Inc. Petition for Waiver of Sections 54.307 and 54.314 of the Commission's Rules*, CC Docket No. 96-45, Order, 19 FCC Rcd 15580, 15585 ¶ 11 (WCB TAPD 2004) (emphasis added) ("Grande Communications Order").

Commission and other line counts and their state certifications before the petition was even filed – indeed, before they even acquired the lines. There is no basis in Bureau or Commission precedent for imposing such a requirement, and this alone justifies a waiver here. Having explicitly relieved ETC applicants from an obligation to file line counts during the pendency of their ETC petitions, the Bureau must grant the requested waivers in order to avoid violating the precedent set in the *Grande Communications Order*.

Aside from wanting to eliminate the need for newly-designated ETCs to file waiver requests in order to receive support in a timely manner, the Commission adopted a 60-day time limit for newly-designated ETCs to file line counts and certifications so as to ensure that “USAC can accurately calculate high-cost support payments.”²⁸ This concern is not raised in this case. The management trustee’s line count filings for the relevant periods, and the Georgia PSC’s certification of the Trustee in October 2009, addressed the same customers and network operations now served by Allied Wireless and Georgia 8. The line counts filed by the Trustee during these periods reflect the line counts for the customers transferred to Allied Wireless and Georgia 8 in the divestiture, thus providing USAC with the information necessary for its demand projections. Similarly, the Georgia PSC’s certification was for the exact same wireless business operations that Allied Wireless and Georgia 8 are now operating. As a result, the Trustee’s filings, and the Georgia PSC’s certification of the Trustee, should be attributed to Allied Wireless and Georgia 8 and serve as the basis for the disbursement of ETC support to them.²⁹

II. The Public Interest Would Be Served by Grant of the Petitions.

Grant of the requested waivers would serve the public interest in compelling ways. The restoration of the interrupted ETC support for these rural areas will: (1) allow for additional investment in these areas, the lack of which would affect jobs in these areas of Georgia as well as the deployment of service; (2) enable Allied Wireless, which is a new entrant in these markets, to offer stronger competition to the large wireless carriers with whom it competes, as the Commission intended when it ordered these markets divested; and (3) effectuate the intent of the Georgia PSC, which has clear jurisdiction over ETC designations in the state.

As the Commission is well aware, a management trustee exercised control over these wireless businesses from the time of Alltel’s merger with Verizon Wireless in January 2009 until the divestiture was consummated on April 26, 2010. During this time, he had the benefit of ETC support resulting from Alltel’s ETC designation in Georgia. When making capital investment decisions for 2010, the trustee assumed that this ETC support would continue uninterrupted and he committed to construction operations and equipment purchases based on that assumption. Allied Wireless has followed through on those commitments, paying for equipment purchases

²⁸ 2005 ETC Order, 20 FCC Rcd at 6411 ¶ 92.

²⁹ It is Allied Wireless’s and Georgia 8’s understanding that, upon closing of the divestiture of the Georgia markets, the trustee notified USAC that it was no longer serving customers in Georgia.

and funding ongoing construction obligations with its own funds and without the benefit of the ETC support that provided the financial basis for such projects.

The total amount of ETC support that would be lost to Allied Wireless and Georgia 8 if the requested waivers are not granted is nearly \$9 million. Failure to restore ETC support would require Allied Wireless and Georgia 8 to scale back investments and deployments in 2011 to compensate for the unfunded projects discussed above and perhaps beyond.³⁰ This would undermine the purposes for which universal service support is intended.³¹

The markets at issue here were ordered divested as a condition to the Commission's approval of Verizon Wireless's merger with Alltel, so as to prevent competitive harm in these markets as a result of that transaction.³² The Commission even encouraged Verizon Wireless to take measures in the divestiture process to enable a new entrant like Allied Wireless to acquire these markets.³³ In approving Allied Wireless as the acquirer of these divestiture assets, the Commission rejected claims that Allied Wireless would be unable to be an effective competitor, and it relied in part on its review of Allied Wireless's financial model. This model, which was

³⁰ Denial of the requested waivers would deny Allied Wireless and Georgia 8 recovery of the significant investment they made in 2010 to deploy 8 new cell sites in the supported area and upgrade existing cell sites, switching, and transport facilities. It would therefore put the petitioners significantly behind in their planned infrastructure investments in 2011. This will result in a delay or cancellation of improved and dependable services that are critical to the safety and economic progress of rural Georgians. These delays to the improvement of facilities to provide the supported services also will delay the deployment of 3G/4G wireless services in the supported areas. The petitioners employ local Georgians and Georgia-based vendors to perform civil construction work and construction of the actual tower structures, crane companies, power and utility firms in addition to their own Georgia-based engineering staff to construct and upgrade existing cellular infrastructure. Each project that is cancelled will result in a reduction in investment in the state of Georgia and less work for Georgians and Georgia-based businesses.

³¹ Because of the way the interim cap on ETC support operates, the support that has not flowed to Allied Wireless and Georgia 8 has instead been an unjustified windfall to other ETCs in Georgia, including the large carriers with whom Allied Wireless and Georgia 8 compete. Upon grant of the requested waivers, we understand that USAC would "true up" the support that these other carriers receive by adjusting their amounts in future quarters. Thus, waiver grants here would have little or no effect on the universal service fund as a whole. Denial of the instant requests would confirm the windfall thus far conferred on Allied Wireless's and Georgia 8's competitors and further ignore the existence of a new competitor, as contemplated by both the FCC and DOJ. Interestingly, none of the other ETCs in Georgia has commented on or objected to the Allied Wireless or Georgia 8 waiver requests.

³² See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and de Facto Transfer of Leasing Arrangements*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17515-17516 ¶ 157 (2008).

³³ *Id.* at 17518 ¶ 162 ("[W]e encourage Verizon Wireless to consider and implement mechanisms to assist regional, local, and rural wireless providers, new entrants, small businesses, and businesses owned by minorities or socially disadvantaged groups in acquiring the Divestiture Assets")

submitted to the Commission confidentially in response to the Commission's request for information, included uninterrupted ETC support. The Commission's order consenting to Allied Wireless's purchase of the divestiture markets stated that the financial model provided "an indication of the viability of ATN as a competitor"³⁴ As a new entrant in the retail wireless marketplace, Allied Wireless seeks only to stand in the former Alltel's shoes so that it can offer the most robust competition possible to existing carriers in its markets. Grant of these waivers and the receipt of the ETC support for 2010 is necessary to achieving this goal. The public interest demands no less.

Finally, the special circumstances giving rise to the requested waivers should allay any concern that waiver grants here will encourage *nunc pro tunc* ETC designations or set a problematic precedent. The Commission order granting the requested waivers should highlight the fact that this case presents unique circumstances, including:

- the continuation of long-standing ETC support for customers whose service had long benefitted from that support (which would stand in stark contrast to virtually all other new designations, which generally involve the receipt of new, not continuing, support);
- the promotion of strong competition from a new entrant in the wireless marketplace where its entry resulted from government-ordered divestitures that were structured so as to preclude transfer of ETC designations; and
- a new entrant competing against larger carriers that would receive an unjustified windfall of ETC support absent the requested waivers.

These special circumstances are highly unusual and unlikely to arise in the event other states grant *nunc pro tunc* ETC designation in the future.

Conclusion

As demonstrated above, grant of the requested waivers is consistent with Commission precedent and would serve the public interest. The pending waiver petitions filed by Allied Wireless and Georgia 8 meet the relevant waiver standard, which is that "special circumstances

³⁴ *Atlantic Tele-Network, Inc. and Verizon Wireless Seek FCC Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 09-119, Memorandum Opinion and Order, 25 FCC Red 3763, 3781 ¶ 35 (2010).

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warrant a deviation from the general rule and such a deviation would serve the public interest.”³⁵
They therefore should be granted without further delay.

Sincerely,



Jeffrey C. Humiston
Vice President and General Counsel

³⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).